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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/711,271	09/07/2004	Janice D. Ebel	BUR920040129US1	5270
45093	7590	06/22/2009		
HOFFMAN WARNICK LLC 75 STATE ST 14TH FLOOR ALBANY, NY 12207			EXAMINER HAYLES, ASHFORD S	
			ART UNIT 3687	PAPER NUMBER
			NOTIFICATION DATE 06/22/2009	DELIVERY MODE ELECTRONIC

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

btviplaw@us.ibm.com  
PTOCcommunications@hoffmanwarnick.com

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/711,271	EBEL ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Ashford S. Hayles	3687	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 30 March 2009.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 07 September 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)          | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

### **DETAILED ACTION**

1. Amendment received on March 30, 2009 has been acknowledged. Amendments to claim 1 has been entered. Therefore, claims 1-20 are pending.

#### ***Response to Amendment***

2. Applicant's amendments are sufficient to overcome 35 USC 101 rejections as set forth in the previous office action.

#### ***Claim Rejections - 35 USC § 112***

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claims 1-20 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 1, 12 and 16 recite: "determining an excess inventory with consideration of a manufacturing limitation and an excess inventory without consideration of the manufacturing limitation for each analysis point."

It is unclear as to what a "consideration" is to determine an excess inventory. The term "consideration" is vaguely used and is unclear as to if the consideration occurs before or after the excess inventory is determined, if the consideration is intended to be a mathematical function, is the consideration a careful thought, which may or may not result in a repeatable process, much less a repeatable result. The Examiner will apply the broadest reasonable interpretation of the claims for examination purposes.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

**5. Claims 1-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kurihara et al. (PG PUB. 2003/0171963).**

**As per Claim 1, 12 and 16**, Kurihara et al. does not expressly disclose an excess inventory with and without a consideration of a manufacturing limitation. However, Kurihara et al. does disclose a method, system and computer program product of managing inventory, the method comprising the steps of:

selecting an analysis duration (Figure 3, Step S2) and at least one analysis point within the analysis duration (Figure 3, Step S3);

determining an excess inventory (pg.3, ¶ [0028] determination of predicted product inventory amounts, or comparison of desired product amounts and the amount (predicted product inventory amount-product inventory target values), may be performed at any time, the amount (predicted product inventory amount-product inventory target values) may be handled as an excess inventory), with consideration of manufacturing limitation (Figure 3, Step S7) and an excess inventory without consideration manufacturing limitation for each analysis point (Figure 3, Step S8);

determining a trapped inventory based on a difference between the excess inventory with consideration of manufacturing limitation and the excess inventory

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without consideration of manufacturing limitation (pgs.13-14, ¶ [0184-0191] discusses a predicted product inventory amount – product inventory target value, where production of product type C, and during the period of periodic inspections, production of product type C will not be possible; hence there is a need to stockpile the anticipated demand amount during this period as product inventory, and so from the current step, "warehousing of 15 tons of product type C by such-and-such date is desired" (4) is input, and thus determining the amount of inventory delayed during the production of product type C); and

determining an impact of a policy inventory on an inventory consumption (Figure 4, Step S15).

**As per Claim 2, 13 and 17**, Kurihara et al. discloses a method, system and computer program product further comprising determining an optimum inventory for each analysis point (Paragraph [0084], lines 25-28 discuss the product inventory target value setting computes product inventory target values for the production plan periods).

**As per Claim 3** Kurihara et al. discloses a method, further comprises selecting a cycle time after each analysis point (Paragraph [0065], lines 36-40 discuss the results of computations, where 30 days was set as the long production plan period, and 5 days as each of the short production plan periods. Hence the short production plan periods are the result of six equal divisions of the long production plan period).

**As per Claim 4**, Kurihara et al. discloses a method, wherein the cycle time is selected based on a time period required for manufacturing an inventory (Figure 3, Step S1).

**As per Claim 5**, Kurihara et al. discloses a method, wherein the optimum inventory is a demand occurring within the cycle time (Table 3 depicts inventory needed for a particular product type with a corresponding time period).

**As per Claim 6, 14 and 18**, Kurihara et al. discloses a method, system and computer program product further comprising determining a total optimum inventory based on the optimum inventory at each analysis point (Paragraph [0072], lines 35-39 discuss the desired product information storage means 200 performs integration of the amount and time of delivery of products whose acquisition is desired input in processing step S1, based on the production plan periods previously written to the production plan period database 311 in processing step S4).

**As per Claim 7, 15 and 19**, Kurihara et al. discloses a method, system and computer program product further comprising determining an inventory that will be consumed in a short term, an inventory that will be consumed in a mid term, an inventory that will be consumed in a long term and an inventory that will not be consumed in a period of time, wherein the short term, mid term and long term are within the analysis duration (Paragraph [0199], lines 1-6 discuss files stored in the product production regulation information storage means are read, and information which must be taken into consideration when creating a production plan is read, including information related to raw materials used for the production of products, such as for example the constitution of raw materials used, consumption units, product inventory amounts, the period required from order to arrival).

**As per Claim 8 and 20**, Kurihara et al. discloses a method, and computer program product further comprising deciding an inventory size based on the excess inventory, the trapped inventory and the impact of the policy inventory (Paragraph [0169], lines 11-20, discuss product production instruction information storage means 600 computes, the amount which must be produced within the production plan period, the difference between the product amount acquisition of which is desired within the production plan period, and the predicted product inventory amount at the time of the desired time of delivery less the product inventory target value to accommodate demand fluctuations which may occur within the production plan period, and stores this together with the desired time of delivery).

**As per Claim 9**, Kurihara et al. discloses a method, further comprising determining an excess inventory with consideration of the policy inventory and an excess inventory without consideration of the policy inventory (Paragraph [0176], lines 16-22, discuss a functional device first checks whether product production instruction amounts and times of delivery are legitimate. That is, checks are performed to determine whether production instruction amounts to satisfy desired times of delivery within the production plan period do not exceed production capacities, and if production capacities are exceeded, whether this can be accommodated by delaying times of delivery, to correct production instruction amounts and times of delivery for the product in question).

**As per Claim 10**, Kurihara et al. discloses a method, wherein the policy inventory impact determining is based on a difference between the excess inventory with consideration of the policy inventory and the excess inventory without consideration of the policy inventory (Paragraph [0170], lines 22-29 discuss When the amount obtained by subtracting the product inventory target value to accommodate demand fluctuations which may occur within the production plan period from the predicted product inventory amount at the desired time of delivery is greater than the product amount acquisition of which is desired at the desired time of delivery, the production instruction amount for the product acquisition of which is desired is treated as zero).

**As per Claim 11**, Kurihara et al. discloses a method, wherein the excess inventory can be a negative number (Paragraph [0170], lines 29-35 discuss when the predicted product inventory amount within the production plan period is less than the product inventory target value to accommodate demand fluctuations which may occur within the production plan period, the deficient amount is computed as a production instruction amount up to the time of the deficiency, where a deficiency can be a negative number).

### ***Response to Arguments***

6. Applicant's arguments filed March 30, 2009 have been fully considered but they are not persuasive.

Applicant argues: "Excess inventory is an amount of inventory that exceeds consumer requirements at a specific time (page 7, paragraph [38]) and the



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consideration is a manufacturing limitation. "Manufacturing limitation" is any limitation that delays the manufacturing of an inventory, e.g., governmental restraint and manufacturing capacity (page 7, paragraph [43]). The Office states it is further unclear as to whether the consideration occurs before or after the excess inventory is determined. Since excess inventory is for a specific time, it is clear that excess inventory is determined at a specific time with and without the manufacturing consideration."

Examiner respectfully disagrees. The Applicant is attempting to use the noun "consideration" as some sort of action that is used to determine excess inventory. The cited portion of the Applicant submitted specification nor the claims in question disclose what action the "consideration" is accomplishing. To one having ordinary skill in the art, the "consideration" could be a careful thought that could be applied or dismissed, thus resulting in a varying process as well as a varying result. Clarification on how exactly a "consideration" is determined is required in order to provide a repeatable process and result.

Applicant argues: *"Never does Kurihara disclose consideration of a manufacturing limitation and the Office's assertions are not supported"*

Examiner contends that Kurihara et al. uses the mathematical operator of subtraction to determine excess inventory, not a careful thought that could be applied or dismissed as suggested by the Applicant's usage of the noun "consideration". Therefore Kurihara does not use "consideration" when determining an excess inventory

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with or without manufacturing limitation, but useful mathematical operation to determine an excess inventory with or without a manufacturing limitation.

Applicant argues: *“Kurihara does not disclose, inter alia “determining a trapped inventory based on a difference between the excess inventory with consideration of the manufacturing limitation and the excess inventory without consideration of the manufacturing limitation.”*

Examiner respectfully disagrees. Again, the applicant claims that a trapped inventory value can be determined based on a difference between the excess inventory with *a careful thought* of the manufacturing limitation and the excess inventory without *a careful thought* of the manufacturing limitation. The ability to determine an excess inventory based on a mere careful thought of a manufacturing limitation can be dismissed or overly applied resulting in variants of the trapped inventory value. Furthermore Kurihara et al. teaches, in Step S13, the product inventory target values are being computed, when the amount obtained by subtracting the product inventory target value to accommodate demand fluctuations (manufacturing limitations) which may occur within the production plan period from the predicted product inventory amount (without manufacturing limitations) at the desired time of delivery (pg. 12, ¶ [0170]), will result into an amount of inventory that is delayed in manufacturing due to certain manufacturing limitations, yet is required to fulfill customer requirements, thus a probable demand is more computable manufacturing limitation than a mere "consideration" as claimed by the Applicant.

***Conclusion***

7. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ashford S. Hayles whose telephone number is 571-270-5106. The examiner can normally be reached on Monday thru Thursday 8:30 to 4:00 Eastern Time.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Matthew Gart can be reached on (571) 272-3955. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For

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more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Elaine Gort/  
Primary Examiner, Art Unit 3687

/A. S. H./  
Examiner, Art Unit 3687